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Table of Contents

Regulations

- 1 Final Rules: Electioneering Communications
- 2 Internet Final Rules

Advisory Opinions

- 4 Nonconnected PAC's Allocation of Expenses and Treatment of Solicitation Proceeds as Contributions AO 2005-13
- 4 Payroll Deduction for LLP PAC AO 2005-20
- 5 Committee May Accept Discount in Normal Course of Business AO 2006-1

800 Line

- 6 Internet Communications and Activity

Using this Supplement

The purpose of this supplement is to offer a summary of the most recent developments in the Commission's administration of federal campaign finance law relating to nonconnected committees. The following is a compilation of articles from the FEC's monthly newsletter covering changes in legislation, regulations and advisory opinions that affect the activities of nonconnected committees. It should be used in conjunction with the FEC's October 2005 *Campaign Guide for Nonconnected Committees*, which provides more comprehensive information on compliance for nonconnected committees.

Laws and Regulations

Final Rules: Electioneering Communications

On December 15, 2005, the Commission voted to modify its regulations governing electioneering communications (EC) to comply with the court decisions in *Shays v. FEC* that invalidated certain portions of those rules. The revised rules, which took effect on January 20, 2006, redefine "publicly distributed" and eliminate an exemption included in the Commission's original regulations.

Background

Introduced as part of the Bipartisan Campaign Reform Act of 2002 (BCRA), the EC provisions place funding restrictions and reporting requirements on certain communications that mention a federal candidate and are aired before the relevant electorate in close proximity to the candidate's election. The statute includes some exemptions from these restrictions and authorizes the Commission to create others, so long as the exempted communications do not promote, attack, support or oppose (PASO) a federal candidate.

In *Shays v. FEC*, the U.S. District

(continued on page 2)

Court for the District of Columbia invalidated two of the Commission's EC regulations. One regulation exempted communications paid for by any 501(c)(3) non-profit organizations. The court stated that, although Internal Revenue Code (IRC) prohibits 501(c)(3) organizations from participating or intervening in political campaigns, the Commission, in creating its exemption, had not explained why it felt the Internal Revenue Service (IRS) restriction was sufficient.

The court also ruled that the Commission exceeded its statutory authority when it limited the definition of "publicly distributed" to communications aired "for a fee." The U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's holding regarding the "for a fee" provision.

The Commission issued a Notice of Proposed Rulemaking to modify the EC regulations to comply with

the District Court's ruling and address other related concerns. See the October 2005 *Record*, page 6.

Final Rules

In creating its final rules, the Commission took into account public comments and testimony from a public hearing on the proposed rules.

501(c)(3) Organizations. In response to the court's concerns, the Commission found that the record in this rulemaking did not demonstrate that the IRC and the Act are perfectly compatible. In the final rules, the Commission eliminated the 501(c)(3) exemption, effectively subjecting those organizations to the ban on corporate-financed ECs.

"For a Fee." In order to qualify as an EC a communication must be "publicly distributed." The Commission had defined "publicly distributed" as "aired, broadcast, cablecast or otherwise disseminated *for a fee*" 11 CFR 100.29(b)(3)(i) (emphasis added). The District Court said that this provision was either inconsistent with the statute or it exceeded the Commission's exemption authority. In its final rules, the Commission removed "for a fee" from the regulatory definition, so that any communication "aired, broadcast, cablecast or otherwise disseminated through the facilities of a television station, radio station, cable television system or satellite system," if not otherwise exempted, is subject to the EC regulations.

Some commenters were concerned that removing the "for a fee" provision could dissuade 501(c)(3) organizations from distributing Public Service Announcements (PSA) that include federal candidates, which may be aired during EC periods: 30 days before a primary election and 60 days before a general election. These commenters noted that 501(c)(3) organizations have little or no control over when their PSAs will air; therefore, a PSA

featuring a federal candidate could be broadcast during the EC periods.

In response to this concern, the Commission encourages organizations to provide broadcasters with an expiration date or some indication that the PSAs which include federal candidates should not be run during the EC periods. Additionally, broadcasters should check PSAs which include federal candidates to ensure that they are not publicly distributed during those periods.

State and Local Candidates. In its initial EC rulemaking, the Commission created another limited exemption for communications by state and local candidates. The Commission decided to retain this exemption, but clarified the regulation.

Films, Books and Plays. The Commission decided not to take action at this time on a Petition for Rulemaking that requested an exemption from the EC regulations for the promotion and advertising of "political documentary films, books, plays and similar means of expression." The Commission will address this issue after it has completed all Rulemakings required by the *Shays* decision.

Additional Information

The revised EC regulations were promulgated in the December 21, 2005 *Federal Register* (70 FR 75713) and are available on the FEC web site at http://www.fec.gov/law/cfr/ej_compilation/2005/notice_2005-29.pdf.

— Carlin E. Bunch

Internet Final Rules

The Commission has approved regulations that narrowly expand the definition of "public communication" to include certain types of paid Internet content. This change complies with the district court's determination in *Shays v. FEC* that the Commission could not exclude

Federal Election Commission 999 E Street, NW Washington, DC 20463

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all Internet communications from its “public communication” definition.

As detailed below and in the accompanying 800-line article, the revised rules also modify the Commission’s disclaimer requirements, add an exception for uncompensated individual Internet activities, revise the “media exemption” to make clear that it covers qualified online publications and add new language regarding individuals’ use of corporate and labor organization computers and other equipment for campaign-related Internet activities.

Background

The Bipartisan Campaign Reform Act of 2002 (BCRA) requires that state, district and local political party committees and state and local candidates use federal funds to pay for any “public communication” that promotes, attacks, supports or opposes (PASOs) a clearly identified federal candidate. Congress defined “public communication” as a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 2 U.S.C. §421(22). Based on that definition, the Commission expressly excluded all Internet communications from its regulatory definition of the term.

In its other BCRA rulemakings, the Commission incorporated the term “public communication” into provisions on generic campaign activity, coordinated communications and disclaimer requirement. By excluding Internet content from the definition of public communication, the Commission effectively exempted most Internet activity from those regulations. The term was also used in the definition of an “agent” of a state or local candidate and in certain allocation rules governing spending by SSFs and nonconnected committees. 11 CFR 300.2(b) and 106.6(f)

On October 21, 2005, the U.S. District Court for the District of Columbia in *Shays* rejected the Commission’s decision to exclude all Internet communications from the definition of “public communication.” 337 F.Supp. 28 (D.D.C. 2004), *aff’d*, 414 F.3d 76 (D.C. Cir. 2005). The court concluded that some Internet communications do fall within the scope of “any other form of general public political advertising” and, therefore, required the Commission to determine which Internet communications were encompassed by that term.

The Commission issued a Notice of Proposed Rulemaking (NPRM) on March 24, 2005, seeking comment on possible rule changes and held public hearings on June 28 and 29, 2005. For more information, see the May 2005 *Record*, page 1 and August 2005 *Record*, page 2.

Final Rules

Public Communication. While the new regulations continue to exempt most Internet communications, those placed on another person’s web site for a fee are now considered “general public political advertising” and, therefore, qualify as “public communications.” By contrast, unpaid Internet communications, including blogs, e-mail and a person’s web site, are not.

Coordination. Content that a person places on one’s own web site is not included in the definition of “public communication,” even if it includes republished campaign material. Therefore, their republication of a candidate’s campaign materials on their own web site, blog or e-mail does not constitute a “coordinated communication.” However, when a person pays a fee to republish campaign materials on another person’s web site, the republication would qualify as a “public communication.”

Disclaimer Requirements. Under the new rules, political committees must include disclaimers on their web sites and their widely-

distributed e-mail, i.e., more than 500 substantially similar messages, regardless of whether the e-mail messages are solicited or unsolicited. Others are not required to include a disclaimer on their own web site or e-mail messages. Persons other than political committees need only include disclaimers on paid Internet advertising that qualifies as a “public communication” and then only if the communication includes certain content such as a message expressly advocating the election or defeat of a clearly identified federal candidate. 11 CFR 110.11.

Uncompensated Individual Internet Activities. Online campaign activity by uncompensated individuals or groups of individuals is exempt from the definitions of contribution and expenditure. 11 CFR 100.94. This exemption applies whether the individual acts independently or in coordination with a candidate, authorized committee or political party committee. Exempt Internet activities include:

- Sending or forwarding election-related e-mail messages;
- Providing a hyperlink to a campaign or committee’s web site;
- Engaging in campaign-related blogging;
- Creating, maintaining or hosting an election-related web site; and
- Paying a nominal fee for a web site or other forms of communication distributed over the Internet.

Media Exemption. In general, a media entity’s costs for carrying *bona fide* news stories, commentary and editorials are not considered “contributions” or “expenditures,” unless the media facility is owned or controlled by a federal candidate, political party or federally registered political committee. See 2 U.S.C. §431(9)(B)(i) and 11 CFR 100.73 and 100.132. The new regulations clarify that the exemption, commonly known as the “news story exemption” or the “media exemption,” extends to media entities that cover

or carry news stories, commentary and editorials on the Internet, including web sites or any other Internet or electronic publication. See also AOs 2005-16, 2004-7 and 2000-13.

The media exemption applies to the same extent to entities with only an online presence as those media outlets that maintain both an offline and an online presence. See the E&J for revised regulations. 11 CFR 100.73 and 100.32.

Corporate and Labor Internet Activities. Commission regulations have long permitted stockholders and employees of a corporation and members of a union to make occasional, isolated or incidental use of the organization's facilities for voluntary political activity. The new regulations clarify that employees may use their work computers at the workplace and elsewhere to engage in political Internet activity, as long as that use does not prevent them from completing their normal work or increase the overhead or operate expenses for the corporation or labor organization. The organization may not condition the availability of its space or computers on their being used for political activity or to support or oppose any candidate or political party. 11 CFR 114.9.¹

State and Local Party Activities. If a party committee pays to produce content that would qualify as federal election activity (FEA)—e.g., a video that PASOs a federal candidate—and pays to post that content on another person's web site, then the entire costs of production and publication of the content must be paid for with federal funds. 11 CFR 100.24. The costs of placing content on the party committee's own web site, however, are not restricted to federal funds. See the E&J for revised 11 CFR 100.26.

¹ The new regulations do not affect the existing regulations concerning communications by such organizations to the restricted class or to the general public. 11 CFR 114.9(e).

The final rules were published in the April 12, 2006 *Federal Register* (71 FR 18589) and will go into effect on May 12, 2006. The final rules are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml and from the FEC Faxline 202/501-3413.

—Carlin E. Bunch

Advisory Opinions

AO 2005-13 Nonconnected PAC's Allocation of Expenses and Treatment of Solicitation Proceeds as Contributions

EMILY's List, a nonconnected federal political action committee (PAC), must use federal funds to pay for at least half of its administrative and generic voter drive expenses, and communications that refer to a political party. Communications that refer to a clearly identified federal candidate must be financed exclusively with federal funds. In addition, EMILY's List must treat as federal contributions the proceeds of any communication that indicates a portion of the funds received will be used to support the election of a clearly identified federal candidate.

Allocation of Administrative and Generic Voter Drive Expenses

EMILY's List is a nonconnected PAC active in both federal and non-federal elections. During the 2006 election cycle, EMILY's List plans to spend 65 percent of its "candidate budget" on nonfederal candidates. These expenses include, among other things, in-kind donations, polling, get-out-the-vote programs, fundraising and broadcast communications.

Commission regulations require nonconnected federal political committees to pay administrative and generic voter drive expenses with a minimum of 50 percent fed-

eral funds. 11 CFR 106.6(b)(1)(i), (b)(1)(iii) and (c). This allocation minimum recognizes that nonconnected PACs can be "dual purpose," engaging in both federal and non-federal election activity, but requires them to use the 50 percent federal minimum regardless of their activity. Therefore, even if EMILY's List spends 65 percent of its budget on nonfederal candidates, it must pay for at least half of its administrative and generic voter drive expenses with federal funds.

Allocation of Expenses for Public Communications

Public communication that refers to a clearly identified federal candidate. EMILY's List plans to make a public communication this election cycle in support of state legislative candidates. The communication will refer to a federal officeholder, Senator Debbie Stabenow, who represents Michigan in the US Senate, and is also up for re-election in 2006, and will feature a discussion of the Senator's experiences earlier in her career as a candidate for state office. The communication will not be distributed in the Senator's home state of Michigan, nor will it make reference the Senator's candidacy for re-election or solicit funds for her campaign.

Commission regulations require nonconnected PACs to pay the costs of a public communication that refers to a clearly identified federal candidate, but does not refer to any nonfederal candidate, with 100 percent federal funds, regardless of whether the communication references a political party. 11 CFR 106.6(b)(2)(ii) and (f)(1)(i). Since EMILY's List's proposed communication references a clearly identified federal candidate, it must be paid for with federal funds.

The Commission noted that its analysis of the proposed communication would not change if a candidate for election in a year other than 2006 were substituted for Senator Stabenow. The Federal

Election Campaign Act (the Act) and Commission regulations define a candidate as an individual seeking nomination for election, or election, to federal office and, who has received contributions or made expenditures aggregating in excess of \$5,000. See 2 U.S.C. 431(2)(A); 11 CFR 100.3(a)(1). Neither the Act nor regulations distinguish between candidates based on election date.

Public communication that refers to a political party. EMILY's List also plans to make a public communication in support of state legislative initiatives and referenda that will refer to "Democrats," but not to any federal or nonfederal candidate. The communication will not be broadcast on radio or television.

Commission regulations require nonconnected PACs to pay for public communications that refer to a political party, but do not refer to any candidates, with at least 50 percent federal funds. 11 CFR 106.6(b)(1)(iv) and (c). In promulgating these rules, the Commission noted that references solely to a political party inherently influence both federal and nonfederal elections, and applying the 50 percent minimum federal funds requirement reflects the "dual nature" of the communication. Therefore, EMILY's List must use federal funds to finance at least half the cost of its public communication referring to "Democrats."

The result would not change even if EMILY's List otherwise supports only nonfederal candidates in the state where the public communication is distributed. Commission regulations apply to public communications based upon the content of the communication, without regard to other activities of the person making the communication.

Treatment of Solicitation Proceeds as Contributions

Commission regulations treat as federal contributions any funds donated in response to a communication that indicates the funds received will be used to support or oppose

the election of a clearly identified federal candidate. 11 CFR 100.57(a). As federal contributions, the funds must comply with the Act's limits and prohibitions, and also count toward the recipient's \$1,000 political committee registration threshold. 11 CFR 100.5(a).

EMILY's List provided excerpts from three fundraising letters it plans to send that feature a federal candidate—Senator Stabenow—but do not reference any other clearly identified federal candidates. Each of the three excerpts indicates that the funds EMILY's List receives in response will be used to support candidates and implicitly to support their election to office. However, in evaluating the sample text, the determination as to whether the proceeds must be considered contributions, and as such comply with the amount limitations, source prohibitions and reporting requirements of the Act, depends upon whether the communication indicates that Senator Stabenow is among those supported candidates.

In two of the three excerpts, Senator Stabenow indicates some of the funds raised would be used to support her re-election.¹ As such, all of the funds received in response to those communications must be treated as federal contributions to EMILY's List. In contrast, the third excerpt indicates that the funds collected would be used on behalf of women seeking state office, which would not include Senator Stabenow as a federal candidate. As such, any of the funds received in response to that communication may be considered donations to the EMILY's List nonfederal account.

Date Issued: October 20, 2005;
Length: 7 pages

—Elizabeth Kurland

¹ The statements of support for Senator Stabenow include, "support candidates, who like me, could never succeed as women in politics," and "I [Senator Stabenow] need your help."

Advisory Opinion 2005-20: Payroll Deduction for LLP PAC

Partners at Pillsbury Winthrop Shaw Pittman LLP (PWSP) may use an automated electronic payroll system to make voluntary contributions to PWSP's PAC, provided that the PAC pays PWSP in advance for the costs associated with the use of the system.

Background

PWSP is a limited liability partnership consisting of over 900 attorneys, more than 300 of whom are partners. PWSP qualifies as a federal contractor because it occasionally provides legal services to federal government agencies. As a partnership, PWSP cannot act as the connected organization for a separate segregated fund (SSF); instead it sponsors a nonconnected political action committee (PAC). Any support PWSP might provide to the PAC would be a partnership contribution.

In 2006, the PAC wants to allow PWSP partners to contribute voluntarily to the PAC by means of PWSP's automated electronic payroll system. Currently, partners wishing to contribute to PWSP PAC must do so by personal check. The PAC would pay all costs associated with the use of the payroll system.

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations prohibit federal contractors—including partnerships—from making contributions or expenditures in connection with any federal election. 2 U.S.C. 441c(a); 11 CFR 115.4(a). However, individuals who work for a federal contractor may contribute in their own name from their own personal assets. 11 CFR 115.4(b). PWSP partners using PWSP's automated electronic payroll system exercise complete control over the funds that represent their net compensation by making

their individual account designations, and the partners may modify or revoke those designations at any time.

Significantly, PWSP has no control over the partners' choice of the recipient of any disbursement from the firm's payroll account and at the moment a disbursement takes place from PWSP's payroll account, the funds being disbursed are the personal assets of the partner. This is the functional equivalent of the partner writing a personal check.

In past advisory opinions, the Commission has stated that the federal contractor prohibition extends to the use of any partnership funds to pay for the PAC's establishment, administration and solicitation costs. As a result, PWSP may not pay any of the costs associated with a partner's use of PWSP's automated electronic payroll system to make voluntary contributions to the PAC without PWSP making a prohibited contribution. However, the Commission has allowed a partnership to pay for its PAC's use of goods and/or services that the partnership offers in the usual course of its business, so long as the political committee provides reimbursement within a "commercially reasonable time." AO 2001-7. This allowance does not extend to goods and services that are not offered by the partnership in the ordinary course of its business. Since use of its automated electronic payroll system is not offered to PWSP's clients in its normal course of business, the PAC must pay in advance all costs associated with using the system in order to avoid an impermissible contribution by federal contractor PWSP to the PAC.¹

Date issued: January 23, 2006
Length: 4 pages

—Myles Martin

¹The Commission considered, but could not reach a consensus on, whether the PAC may reimburse PWSP within a commercially reasonable time, rather than pre-pay for these costs.

Advisory Opinion 2006-1: Committee May Accept Discount in Normal Course of Business

A nonconnected political action committee may purchase bulk copies of a candidate's book at a discount if the publisher offers the same rate to others who buy books in bulk.

Background

Pac for a Change plans to purchase from a publishing company numerous copies of Senator Barbara Boxer's book *A Time to Run*. The publisher would sell the books to the committee at a bulk rate price, which is below the suggested retail price. The committee would then offer signed copies of the books to any person who raises at least \$100 for the committee within a certain time period.

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations define a "contribution" to include anything of value given for the purpose of influencing a federal election. 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.52(a). "Anything of value" includes the provision of goods or services at less than the usual and normal charge. The usual and normal charge of goods means the market price of those goods at the time of the contribution.

In past advisory opinions, the Commission has concluded that discounts offered in a vendor's ordinary course of business do not result in contributions. (See AOs 2004-18, 2001-08, 1996-02, 1995-46, 1994-10, and 1993-20). Since books bought in bulk normally are offered at discounted price, the publisher would not be making an in-kind contribution to the committee if the price Pac for a Change pays is the usual and normal price paid by other

bulk book purchasers.

Length: 3 pages

Date: February 28, 2006

—Meredith E. Metzler

800 Line

Internet Communications and Activity

On March 27, 2006, the Commission approved new regulations governing certain types of Internet communications. The rules will take effect on May 12, 2006. The questions and answers that follow address not only those new regulations, but also past Commission precedents regarding use of the Internet in connection with federal elections. Copies of both the new regulations and the cited advisory opinions (AOs) are available via the FEC's web site at <http://www.fec.gov>.

Internet Activity Conducted by Individuals

Can I use my computer for political activity in connection with federal elections? How about a library computer, school computer or neighbor's computer?

Yes. An uncompensated individual or group of individuals may engage in Internet activities for the purpose of influencing a federal election without restriction. The activity would not result in a "contribution" or an "expenditure" under the Act, and would not trigger any registration or reporting requirements with the FEC. This exemption applies to individuals acting with or without the knowledge or consent of a campaign or a political party committee.¹ 11 CFR 100.94 and 100.155. Possible Internet activities include,

¹ Because the activity is exempt from the definitions of "contribution" and "expenditure," a group of individuals that spends more than \$1,000 on such activity does not trigger political committee status under the Act and FEC regulations. See 11 CFR 100.5.

but are not limited to, sending or forwarding electronic mail, providing a hyperlink to a web site, creating, maintaining or hosting a web site and paying a nominal fee for the use of a web site. 11 CFR 100.94(b). Please note that these exemptions apply regardless of whether the individual owns the computer in use.

What are the rules for sending personal e-mail regarding political topics or federal elections?

Basically, there are no rules for individuals. Individuals may send unlimited e-mail on any political topic without identifying who they are or whether their messages have been authorized by any party or campaign committee. 11 CFR 110.11(a).

May I post comments to a blog in connection with a federal election?

Yes. Uncompensated blogging, whether done by individuals or a group of individuals, incorporated or unincorporated, is exempt from regulation. See 11 CFR 100.94 and 100.155. This exception applies even in those cases where a nominal fee is paid. See also How has the Commission applied the Act to online news media? under Press Entities, on page 6.

Are the rules different if I pay to place an ad on someone else's web site?

Yes. Internet communications placed on another person's web site for a fee are considered "general public political advertising" and are thus "public communications" under the law. 11 CFR 100.26. As such, paying to place a communication on another person's web site may result in a contribution or expenditure under the Act. Other regulations regarding coordinated communications, 11 CFR 109.21 and 109.37, and disclaimer requirements, 11 CFR 110.11(a), would also apply.

May I use my work computer for online political activity?

Yes, this is permissible subject to

your employer's rules for personal use of computers and Internet access and as long as you are not compensated for the activity. 11 CFR 100.94 and 114.9(a) and (b). See May a corporation or union allow its employees or members to use their work computers for individual volunteer activity? under Use by Corporations/Labor Organizations/Trade Associations, below.

Internet Activity Conducted by Federal Political Committees

Is a disclaimer required on e-mail or our web site?

Yes. The Act and regulations require FEC-registered political committees to place disclaimers on their public web sites. Moreover, if a political committee sends more than 500 substantially similar e-mail, each message must include a disclaimer. 11 CFR 110.11(a). For specific disclaimer requirements, see 11 CFR 110.11(b) and the Commission's brochure "Special Notices on Political Ads and Solicitations," available online at <http://www.fec.gov/pages/brochures/notices.shtml>.

Do the new regulations affect online fundraising by our committee?

No. Over the years, the Commission has issued several advisory opinions concerning online fundraising by political committees. The AOs make it clear that political committees must adapt online fundraising to comply with the Act's recordkeeping and reporting provisions.

First, committees using the Internet for fundraising must make "best efforts" to obtain and report the identification of donors who contribute more than \$200 during a calendar year. Committees must maintain electronic records and contributor data for three years after the date on which it reported the contributions. AOs 1999-22 and 1995-9.

Second, to avoid receiving prohibited contributions, web sites solicit-

ing contributions in connection with a federal election must inform potential contributors of all of the Act's prohibitions, including the prohibitions on contributions from corporations, labor organizations, federal government contractors and foreign nationals,² and the restrictions at 11 CFR 110.19 on contributions from minors. AOs 1999-22, 1999-9 and 1995-9 contain detailed examples of Commission-approved language and mechanisms for screening contributors.

Third, in several AOs, the Commission has said that online contributions may be made via credit card or electronic checks. Such contributions are acceptable for publicly funded presidential campaigns and are matchable provided that the correct documentation is provided to the Commission. See 11 CFR 9034.2(c)(8) and AOs 1999-36, 1999-22, 1999-9 and 1995-9. The Commission has also permitted businesses to administer online fundraising for political committees, so long as they provide their services at the usual and normal charge and in their ordinary course of business. See below.

Finally, separate segregated funds established by corporations, labor organizations or trade associations should consult Are there special rules concerning online fundraising for corporate/labor/trade association PACs? under Internet Activity by Corporations/Labor Organizations/Trade Associations, below.

Internet Activity Conducted by Corporations/Labor Organizations/Trade Associations

Our corporation normally provides commercial services online; may we do so for candidates and political committees?

Yes, this is permissible as long as the corporation charges the usual and normal fee for its services. Failure to do so could result in a prohibited contribution. For example, in AO

² See 2 U.S.C. §§441b, 441c and 441e.

2004-6, an online service offering a web platform for arranging local gatherings was permitted to provide both its free and fee-based services to federal candidates and political committees as long as it did so on the same terms it offered to all similarly situated persons in the general public. In contrast, in AO 1996-2, the Commission concluded that a corporation could not provide online accounts—for which it normally charged a fee—to candidates free of charge.

May our corporation/labor union/trade association send out an e-mail to endorse a federal candidate or place an endorsement on its web site?

It depends. As has long been the case, a corporation, union or trade association may only direct express advocacy communications to its restricted class. So, if the organization addressed its e-mail endorsing a federal candidate only to individuals within its restricted class, it would be permissible. By contrast, the organization generally cannot place endorsements or solicitations for a candidate on its web site, unless access to those portions of the site is limited to members of the restricted class.³ See AO 1997-16, 2 U.S.C. §441b(b)(2)(A) and 11 CFR 114.3.

Are there special rules concerning online fundraising for corporate/labor/trade association PACs?

Yes. Since a corporate/labor/trade association PAC may only solicit contributions from its restricted class, access to online solicitations must be limited to members of that group, e.g., password protected.⁴ 2 U.S.C. §441b(b)(4). Alternatively, a

corporation/labor organization/trade association could maintain an e-mail listserv—i.e., mailing list—to send PAC solicitations to members of the organization's restricted class. AO 2000-07.

May a corporation or union allow its employees or members to use their work computers for individual volunteer activity?

Yes, a corporation or a labor organization may permit its employees, shareholders, officials and members to use its computer and Internet facilities for individual volunteer Internet activity, without making a prohibited contribution. This exemption is contingent on the individual completing the normal amount of work for which the employee is paid, or is expected to perform, that the activity would not increase the overhead or operating costs of the organization, and that the activity is not coerced. The organization may not condition the availability of the Internet or the computer on their being used for political activity or for support for or opposition to any particular candidate or political party. Revised 11 CFR 114.9(a)(2) and (b)(2).

Activity Conducted by Press Entities and Bloggers

How has the Commission applied the Act to online news media?

Under the Act and FEC regulations, a media entity's costs for carrying news stories, commentary and editorials are not considered "contributions" or "expenditures." See 2 U.S.C. §431(9)(B)(i) and 11 CFR 100.73 and 100.132. This exemption, commonly known as the "news story exemption" or the "media exemption" now extends to media entities that cover or carry news stories, commentary and editorials on the Internet, including web sites or any other Internet or electronic publication. See also AOs 2005-16, 2004-7 and 2000-13.

The media exemption applies to the same extent to entities with only an online presence as those media

outlets that maintain both an offline and an online presence. See the E&J for revised regulations 11 CFR 100.73 and 100.32.

Are bloggers considered press entities?

Bloggers and others who communicate on the Internet are entitled to the press exemption in the same way as traditional media entities. However, the Commission has decided not to change its rules regarding the media exemption so as to specifically include *all* blogging activity within the "media exemption." Many bloggers may also be entitled to the new Internet activities exemptions for individuals. 11 CFR 100.94 and 100.155. This includes incorporated blogs that are wholly-owned by an individual, are engaged primarily in Internet activities and derive a substantial portion of their income from their Internet activities. See the E&J for revised 11 CFR 100.73 and 100.32 and AO 2005-16. Whether covered by the media exemption or the individual activity exemption, blogging will generally not be subject to FEC regulation.

—Dorothy Yeager

³ If the organization routinely posts press releases on its web site, it may post a release announcing its endorsement of a federal candidate in the same manner. 11 CFR 114.4(c)(6).

⁴ See 11 CFR 114.5(g), 114.7(a) and 114.8(c).